

THIS DISPOSITION IS NOT CITABLE  
AS PRECEDENT OF THE TTAB

JAN. 19,99

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Avedis Zildjian Co.

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Serial No. 75/061,491

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Timothy A. French of Fish & Richardson P.C. for Avedis  
Zildjian Co.

Richard A. Straser, Trademark Examining Attorney, Law  
Office 104 (Sidney Moskowitz, Managing Attorney).

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Before Simms, Hairston and Bucher, Administrative Trademark  
Judges.

Opinion by Simms, Administrative Trademark Judge:

Avedis Zildjian Co. (applicant), a Massachusetts  
corporation, has appealed from the final refusal of the  
Trademark Examining Attorney to register the mark ENSEMBLE  
SERIES, for musical instruments--namely, drumsticks.<sup>1</sup> The

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<sup>1</sup> Application Serial No. 75/061,491, filed February 23, 1996,  
based upon applicant's claim of use of the mark in commerce since

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Examining Attorney has refused registration under Section 2(d) of the Act, 15 U.S.C. §1052(d), on the basis of Registration No. 1,111,734, issued January 23, 1979 (combined Sections 8 and 15 filed) for the mark ENSEMBLE for "percussion musical instruments-namely, drum heads."<sup>2</sup>

It is applicant's position that the word "ensemble" has a well-recognized meaning connected to music including "a group producing a single effect: as **a:** concerted music of two or more parts" and "the musicians engaged in the performance of a musical ensemble." Accordingly, applicant argues that the cited mark ENSEMBLE is highly suggestive as used in connection with musical instruments and that the scope of protection accorded such a highly suggestive mark is quite limited. Applicant has not presented any arguments that the goods of applicant and registrant are not related.

We agree with the Examining Attorney that confusion is likely. With respect to the goods, drumheads are the portions of the drums which are struck by drumsticks. There can be no doubt, therefore, that the goods are

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at least as early as 1993. Pursuant to request, applicant submitted a disclaimer of the word "SERIES" apart from the mark as shown.

<sup>2</sup> As the Examining Attorney has noted in his appeal brief, a drumhead is defined by Webster's New World Dictionary of American English (3<sup>rd</sup> ed. 1988) as "the membrane stretched over the open end or ends of a drum."

closely related and would, in fact, be used together. While applicant's attorney and the Examining Attorney differ on the strength or weakness of the cited mark (the Examining Attorney contending that ENSEMBLE is arbitrary as applied to drumheads and the applicant arguing that it is highly suggestive), we agree that the respective marks, which we regard as only slightly suggestive of the goods with which they are used, are sufficiently similar that confusion is likely. The marks ENSEMBLE and ENSEMBLE SERIES create similar commercial impressions. The addition of the descriptive and disclaimed word "SERIES" to registrant's mark is not sufficient to overcome a likelihood of confusion. Purchasers, aware of registrant's ENSEMBLE drumheads, who then see applicant's related goods sold under the mark ENSEMBLE SERIES, are likely to believe that these goods come from the same source. We have considered applicant's other arguments, including the existence of two registrations for musical instruments which include the term "ENSEMBLE." Suffice it to say that they are not evidence that the public is familiar with them and do not overcome the refusal of the Examining Attorney.

Decision: The refusal of registration is affirmed.

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R. L. Simms

P. T. Hairston

D. E. Bucher  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board